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In re Application of
Quibell, et al.
Application No. 10/015,186
Filed: November 16, 2001
Attorney Docket No. 1718-0195P

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: DECISION ON PETITION
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OFFICE OF PETITIONS

This is a decision on the renewed "... Petition for Inclusion into the Application of Allegedly 'Omitted' Material," filed October 29, 2002. Petitioner requests that the application be accorded a filing date of November 16, 2001, with page 49 of the specification as a part of the original application disclosure. Application papers in the above-identified application were filed on November 16, 2001. However, on May 3, 2002, the Office of Initial Patent Examination mailed applicants a "Notice to File Missing Parts of Application." Applicants were thereby notified *inter alia* that the application papers had been accorded a filing date; however, page 49 of the specification appeared to have been omitted. In response, applicants timely filed the initial petition under § 1.53, asserting that page 49 was properly submitted with the original application papers, and should be included in the application as originally filed, with a filing date of November 16, 2001.

The petition was dismissed to the extent that page 49 was not shown to have been among the original application papers filed November 16, 2001. However, by virtue of a proper incorporation by reference statement, applicants were advised that they may seek by preliminary amendment to amend the application to include page 49 of the specification.

In response, applicants filed the instant renewed petition, along with a copy of the specification as petitioner maintains it was originally filed. Furthermore, applicants state that they have now received the stamped and dated postcard from the United States Patent and Trademark Office, and submit this postcard in evidence that a specification consisting of 166 pages was received in the Office.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. For example, merely listing on the postcard "a complete application" or "patent application" will not serve as a proper receipt for each of the required components of an application (e.g., specification (including claims), drawings (if necessary), oath or declaration and the application filing fee) or missing portions (e.g., pages, sheets of drawings) of an application if one of the components or portion of a component is found to be missing by the USPTO. **Each separate component should be specifically and properly itemized on the postcard.** Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items.

A review of petitioner's postcard receipt reveals that: 1) it was date stamped as received in the USPTO on November 16, 2001, and the papers submitted therewith were assigned application No. 10/015,186; 2) it specifically identifies a "specification consisting of 166 pages" as being filed and 3) it lacks any annotation of nonreceipt of any item denoted on the postcard.

The postcard has been reviewed and it has been concluded that the identification on the postcard, considering the specific contents of the filing, is specific enough to identify the pages of specification being submitted. The filing includes pages of specification each numbered from page 1 through 166 and there are no other such numbered pages among the application papers filed. Thus, the postcard serves as persuasive evidence that 166 pages of specification were filed on November 16, 2001. The pages of specification already considered received in the Office on November 16, 2001, were reviewed along with the 166 pages of specification submitted on petition. The pages of specification already considered received in the Office along with page 49 of the resubmitted specification constitute the item described on the postcard receipt as "specification consisting of 166 pages." Thus, petitioner has shown that page 49 was among the items present in the application on the date of deposit and should be included in the original application disclosure.

Accordingly, the petition is GRANTED.

Given the basis for granting the petition, the petition fees¹ are being refunded to Deposit Account No. 02-2448, as authorized.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for:

- further processing with a filing date of November 16, 2001, using the application papers received in the Office and presently accorded that date, and page 49 of the specification resubmitted on petition filed October 29, 2002;
- indication in Office records that page 49 of the specification was present in the application on filing; and
- processing of the responses filed August 12, 2002, to the "Notice to File Missing Parts of Application" mailed May 3, 2002.

Telephone inquiries related to this decision may be directed to Petitions Attorney Nancy Johnson at (703) 305-0309.

for B Wood

Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

¹ \$130 was charged to petitioner's Deposit Account both on initial filing of the petition and renewed filing of the petition. In this instance, refund of both fees is warranted.